

## SENATE BILL NO. 48

INTRODUCED BY M. SPRAGUE

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING~~ CLARIFYING THAT ALL ALCOHOLIC BEVERAGES TO BE SOLD TO CONSUMERS IN MONTANA MUST BE DISTRIBUTED ACCORDING TO THE MONTANA ALCOHOLIC BEVERAGE CODE; CLARIFYING THAT OUT-OF-STATE SHIPPERS OF ALCOHOLIC BEVERAGES ~~TO~~ MAY NOT SHIP BEER, WINE, OR HARD CIDER DIRECTLY TO MONTANA RESIDENTS WHO DO NOT POSSESS A CONNOISSEUR'S LICENSE; ~~AND~~ CLARIFYING THE MANNER IN WHICH BREWERIES PROVIDE BEER TO THE PUBLIC; ESTABLISHING A CONNOISSEUR'S LICENSE; ALLOWING LIMITED DIRECT SHIPMENT OF BEER AND WINE FROM OUT-OF-STATE BREWERIES AND WINERIES TO CONNOISSEUR'S LICENSE HOLDERS; PROVIDING THAT OUT-OF-STATE BREWERIES AND WINERIES REGISTER WITH THE DEPARTMENT OF REVENUE; LIMITING THE AMOUNT OF BEER OR WINE THAT OUT-OF-STATE BREWERIES AND WINERIES MAY SHIP INTO THE STATE TO CONNOISSEUR'S LICENSE HOLDERS; ESTABLISHING AN OFFENSE OF ILLEGAL IMPORTATION OR DISTRIBUTION OF ALCOHOLIC BEVERAGES; ESTABLISHING PENALTIES FOR ILLEGAL SHIPMENTS; ~~AND~~ AMENDING SECTIONS 16-1-101, 16-1-104, 16-3-101, 16-3-214, 16-6-301, AND 16-6-302, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Legislative findings and declaration of public policy. (1) The legislature finds that the direct shipment of beer, wine, and hard cider by persons in the business of selling alcoholic beverages in other states or countries to residents of this state in violation of this code poses a serious threat to the public health, safety, revenue, and economy of this state.~~

~~(2) The legislature further finds that existing penalties for illegal direct shipments of beer, wine, and hard cider to residents of this state are inadequate to ensure compliance with the law.~~

~~(3) The legislature declares as a matter of public policy that the provisions of [sections 1 through 3] are fully consistent with the powers conferred upon the state by the 21st amendment to the United States constitution.~~

1

2 ~~NEW SECTION. Section 2. Direct shipment of beer, wine, and hard cider prohibited.~~ (1) A person  
3 may not ship or cause to be shipped beer, wine, or hard cider from an out-of-state location directly to any  
4 person in this state who does not hold a valid wholesaler's license issued by the department.

5 ~~(2) A common carrier or an operator of a privately owned automobile, truck, bus, or other~~  
6 conveyance may not deliver beer, wine, or hard cider to any person in this state who does not hold a valid  
7 wholesaler's license issued by the department.

8 ~~(3) This section does not prohibit an out-of-state shipper who is validly licensed by or registered~~  
9 ~~with the department from shipping beer, wine, or hard cider to a wholesaler in the state who holds a valid~~  
10 ~~license issued by the department.~~

11

12 ~~NEW SECTION. Section 3. Penalties for violation.~~ A person who violates the provisions of [section  
13 2] is guilty of a felony and upon conviction shall be punished by a fine of not less than \$1,000 or more  
14 than \$5,000, by imprisonment in the state prison for not less than 1 year or more than 5 years, or both.  
15 The penalties imposed by this section may be in addition to any civil penalties imposed under this code.

16

17 ~~NEW SECTION. Section 4. Codification instruction.~~ [Sections 1 through 3] are intended to be  
18 codified as an integral part of Title 16, chapter 6, part 3, and the provisions of Title 16, chapter 6, part  
19 3, apply to [sections 1 through 3].

20

21 SECTION 1. SECTION 16-1-101, MCA, IS AMENDED TO READ:

22 "16-1-101. Citation -- declaration of policy -- subject matters of regulation. (1) Chapters 1 through  
23 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

24 (2) It is hereby declared to be the policy of the state of Montana to effectuate and ensure the  
25 entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state  
26 of Montana, as that term is defined in this code, subject to the authority of the state of Montana through  
27 the Montana department of revenue.

28 (3) This code is an exercise of the police power of the state, in and for the protection of the  
29 welfare, health, peace, morals, and safety of the people of the state, ~~and its provisions shall be construed~~  
30 for the accomplishment of such purposes and of the state's power under the 21st amendment to the

United States constitution to control the transportation and importation of alcoholic beverages into the state. The provisions of this code must be broadly construed to accomplish these purposes."

**SECTION 2. SECTION 16-1-104, MCA, IS AMENDED TO READ:**

**"16-1-104. Intent and construction of code. (1)** The purpose and intent of this code are to:

(a) establish a state licensing system to control the transportation and importation of alcoholic beverages into Montana and the manufacture, sale, transportation, and distribution of alcoholic beverages within the state of Montana; and

(b) prohibit transactions in alcoholic beverages which take place wholly within the state of Montana except under state control as specifically provided by this code, and every.

(2) Every section and provision of this code shall must be construed accordingly according to subsection (1). The provisions of this code dealing with the importation, sale, and disposition of alcoholic beverages within the state, through the instrumentality of a department and otherwise, provide the means by which such state control shall be made effective, and nothing in this code shall be construed as forbidding, affecting, or regulating any transaction which is not subject to the legislative authority of the state."

**SECTION 3. SECTION 16-3-101, MCA, IS AMENDED TO READ:**

**"16-3-101. Alcoholic beverages dispensed beverage transactions -- only in accordance with code.**

(1) No brewer, beer importer, distiller, or manufacturer of alcoholic beverages shall, within the state, by himself, his clerk, servant, or agent, give A person who manufactures, imports, distributes, or sells alcoholic beverages or the persons's agent may not give or sell to any person within the state any alcoholic beverage except as may be permitted by and in accordance with the rules made under provisions of this code.

(2) (a) Except as otherwise provided by this code, a person or the person's agent may not ship, transport, or consign or cause to be shipped, transported, or consigned:

(i) any alcoholic beverage to any person in this state who does not hold a valid wholesaler's license OR CONNOISSEUR'S LICENSE issued by the department; or

(ii) any liquor except to the state liquor warehouse.

(b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by

1 telephone, computer, or other device, EXCEPT BY PERSONS HOLDING A VALID CONNOISSEUR'S LICENSE PROVIDED FOR  
2 IN [SECTION 7].

3 (3) Except as otherwise provided by this code, alcoholic beverages shipped, transported, or  
4 consigned pursuant to subsection (2)(a) and intended for sale to any person not licensed under this code  
5 must be distributed by the licensed wholesaler to a licensed retailer for sale to the ultimate consumer."  
6

7 **SECTION 4. SECTION 16-3-214, MCA, IS AMENDED TO READ:**

8 **"16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and  
9 restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year,  
10 upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence  
11 to the department as required by 16-4-101, must be licensed by the department, in accordance with the  
12 provisions of this code and rules prescribed by the department, to:

13 (a) sell and deliver beer from its storage depot or brewery located in Montana to:

14 (i) a wholesaler; or

15 (ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or

16 (iii) the public; or

17 (b) provide its own products for consumption on its licensed premises without charge or, if it is  
18 a small brewery, provide its own products at a sample room as provided in 16-3-213; or

19 (c) do any one or more of the acts of sale and delivery of beer as provided in this code.

20 (2) A brewery may not use a common carrier for delivery of the brewery's product to the public.

21 ~~(2)~~(3) An additional license fee may not be imposed on a brewery providing its own products on  
22 its licensed premises for consumption on the premises.

23 ~~(3)~~(4) This section does not prohibit a brewer located outside of Montana from shipping and selling  
24 beer directly to a wholesaler in this state under the provisions of 16-3-230."  
25

26 **SECTION 5. SECTION 16-6-301, MCA, IS AMENDED TO READ:**

27 **"16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful.** (1) Except  
28 as provided by this code, a person or the person's agents or employees may not:

29 (a) expose or keep an alcoholic beverage for sale;

30 (b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic

1 beverage; or

2 (c) in consideration of the purchase or transfer of any property or for any other consideration or  
3 at the time of the transfer of any property, give to any other person an alcoholic beverage.

4 (2) A person may not have or keep any alcoholic beverage that has not been purchased within the  
5 state of Montana.

6 (3) This ~~section~~ code does not prohibit:

7 (a) a person entering this state from another state or foreign country from having in the person's  
8 actual physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased  
9 in another state or foreign country;

10 (b) possession of beer produced for personal or family use and not intended for sale that meets  
11 the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of  
12 beer, for personal or family use, on premises other than those of the person brewing the beer;

13 (C) POSSESSION OF BEER OR WINE PURCHASED FROM AN OUT-OF-STATE BREWERY OR WINERY IF THE PERSON  
14 POSSESSING THE BEER OR WINE HOLDS A CONNOISSEUR'S LICENSE AS PROVIDED FOR IN [SECTION 7];

15 ~~(e)(D)~~ possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by  
16 the United States for the manufacture of those alcoholic beverages;

17 ~~(d)(E)~~ possession of proprietary or patent medicines or of any extracts, essences, tinctures, or  
18 preparations if the possession is authorized by this code; or

19 ~~(e)(F)~~ possession by a sheriff or bailiff of alcoholic beverages seized under execution or other  
20 judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the  
21 department or a licensee.

22 (4) Except as provided in this code, a person or the person's agents or employees may not:

23 (a) attempt to purchase any alcoholic beverage;

24 (b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

25 (c) in consideration of the sale or transfer of any property or for any other consideration or at the  
26 time of the transfer of any property, take or accept from any other person any alcoholic beverage."

27

28 SECTION 6. SECTION 16-6-302, MCA, IS AMENDED TO READ:

29 "16-6-302. ~~Penalty for sale~~ ~~Sale~~ of alcoholic beverage without license -- sale or importation in  
30 violation of code -- penalty. (1) For the purposes of this section "person" means an individual, partnership,

corporation, company, firm, society, association, joint stock company, trust, or other entity capable of holding a legal or beneficial interest in property, but does not include a state or agency of a state.

(2) ~~Any~~ A person who has not been issued a license under this code who sells or keeps for sale in Montana any alcoholic beverage is ~~guilty of a felony~~ commits a criminal offense and upon conviction thereof is punishable by a fine of not less than \$1,000 or more than to exceed \$5,000 or by imprisonment in the state prison for not less than 1 or more than 5 years or by both ~~such~~ the fine and imprisonment.

(3) A person in the business of selling alcoholic beverages in another state or country who imports or distributes alcoholic beverages in violation of this code commits a civil offense.

(4) A person convicted under subsection (3):

(a) for a first offense, must be mailed a certified letter by the department ordering that person to cease and desist any shipments of alcoholic beverages to any person in Montana;

(b) for a second offense, shall be fined a civil penalty not to exceed \$5,000; ~~and~~

(c) for a third offense, shall be fined a civil penalty not to exceed \$10,000; AND

(D) FOR A FOURTH OR SUBSEQUENT OFFENSE, SHALL BE FINED A CIVIL PENALTY NOT TO EXCEED ~~\$25,000~~ \$50,000.

~~(4) A fourth or subsequent violation of subsection (3) is a felony and the person shall be fined an amount not to exceed \$25,000."~~

NEW SECTION. SECTION 7. CONNOISSEUR'S ~~LICENSE~~ LICENSES -- APPLICATION --~~FEE FEES~~. (1) A PERSON IN THIS STATE DESIRING TO RECEIVE DIRECT SHIPMENTS OF BEER ONLY, ~~OR~~ WINE ONLY, OR BOTH BEER AND WINE FROM AN OUT-OF-STATE BREWERY OR WINERY FOR THE PERSON'S OWN CONSUMPTION AND NOT FOR RESALE SHALL FILE WITH THE DEPARTMENT AN APPLICATION FOR A CONNOISSEUR'S LICENSE. THE APPLICATION MUST BE ACCOMPANIED BY A REGISTRATION FEE IN THE AMOUNT OF:

(A) \$50 FOR A BEER CONNOISSEUR'S LICENSE;

(B) \$50 FOR A WINE CONNOISSEUR'S LICENSE; OR

(C) \$100 FOR A BEER AND WINE CONNOISSEUR'S LICENSE.

(2) EACH APPLICATION FOR A LICENSE MUST BE ON A FORM PRESCRIBED BY THE DEPARTMENT AND MUST SET FORTH THE NAME OF THE APPLICANT, THE APPLICANT'S HOME OR BUSINESS ADDRESS, PROOF THAT THE APPLICANT IS A LEAST 21 YEARS OF AGE, AND OTHER INFORMATION THAT THE DEPARTMENT MAY REQUIRE.

(3) A CONNOISSEUR'S LICENSE EXPIRES ON JUNE 30 OF EACH CALENDAR YEAR. A LICENSEE MAY ANNUALLY

1 RENEW A LICENSE WITH THE DEPARTMENT BY PAYING A \$25 RENEWAL FEE FOR A BEER CONNOISSEUR'S LICENSE OR A WINE  
2 CONNOISSEUR'S LICENSE AND A \$50 RENEWAL FEE FOR A BEER AND WINE CONNOISSEUR'S LICENSE.

3 (4) THE HOLDER OF A CONNOISSEUR'S LICENSE MAY NOT SELL BEER OR WINE TO THE PUBLIC.

4 (5) THE DEPARTMENT SHALL ADOPT RULES TO PROVIDE PROCEDURES FOR THE APPLICATION FOR AND THE  
5 PROVISION OF A CONNOISSEUR'S LICENSE.

6  
7 NEW SECTION. SECTION 8. PAYMENT OF TAXES -- AUTHORITY OF DEPARTMENT. (1) A PERSON HOLDING  
8 A CONNOISSEUR'S LICENSE SHALL PAY, ON JUNE 30 AND DECEMBER 31, THE BEER AND WINE TAXES IMPOSED BY TITLE  
9 16, CHAPTER 1, PART 4, ON BEER OR WINE THAT IS RECEIVED BY DIRECT SHIPMENT FROM AN OUT-OF-STATE BREWERY  
10 OR WINERY DURING THE PREVIOUS 6-MONTH PERIOD.

11 (2) EACH HOLDER OF A CONNOISSEUR'S LICENSE SHALL FILE WITH THE DEPARTMENT A RETURN, ON A FORM  
12 PROVIDED BY THE DEPARTMENT, AND PAY THE TAX FOR SHIPMENTS RECEIVED.

13  
14 NEW SECTION. SECTION 9. DIRECT SHIPMENT OF BEER OR WINE -- LIMITATIONS. (1) THE SUBJECT TO THE  
15 PROVISIONS OF [SECTION 7], THE HOLDER OF A CONNOISSEUR'S LICENSE MAY RECEIVE UP TO ~~288~~ 144 BOTTLES OR ~~24~~  
16 12 CASES OF WINE OR ~~576~~ 288 BOTTLES OR ~~24~~ 12 CASES OF BEER FROM AN OUT-OF-STATE BREWERY OR WINERY  
17 DURING A 12-MONTH PERIOD FOR PERSONAL USE AND NOT FOR RESALE. A PERSON WISHING TO RECEIVE BOTH WINE AND  
18 BEER UNDER THIS SECTION MUST POSSESS A BEER AND WINE CONNOISSEUR'S LICENSE.

19 (2) A LICENSEE UNDER THIS SECTION SHALL FORWARD TO THE OUT-OF-STATE BREWERY OR WINERY A DISTINCTIVE  
20 ADDRESS LABEL, PROVIDED BY THE DEPARTMENT, CLEARLY IDENTIFYING ANY PACKAGE THAT IS SHIPPED AS A LEGAL  
21 DIRECT-SHIPMENT PACKAGE TO THE HOLDER OF A CONNOISSEUR'S LICENSE.

22 (3) A LICENSEE SHALL REPORT TO THE DEPARTMENT, ON JUNE 30 AND DECEMBER 31, THE TOTAL AMOUNT OF  
23 BEER OR WINE RECEIVED FROM AN OUT-OF-STATE BREWERY OR WINERY AND PAY ALL APPLICABLE EXCISE TAXES, AS  
24 PROVIDED FOR IN TITLE 16, CHAPTER 1, PART 4, IMPOSED ON THE RECEIPT OF BEER OR WINE DURING THE PREVIOUS 6  
25 MONTHS.

26  
27 NEW SECTION. SECTION 10. OUT-OF-STATE BREWERY OR WINERY REGISTRATION -- LIMITATION ON SHIPPING  
28 -- PENALTY. (1) EACH OUT-OF-STATE BREWERY OR WINERY DESIRING TO SHIP BEER OR WINE TO A PERSON HOLDING A  
29 CONNOISSEUR'S LICENSE SHALL REGISTER WITH THE DEPARTMENT ON FORMS PROVIDED BY THE DEPARTMENT.

30 (2) THE ANNUAL LIMIT ON OUT-OF-STATE SHIPMENTS TO ALL CONNOISSEUR'S LICENSE HOLDERS IS:

1 (A) 1,440 BOTTLES OR 60 CASES OF BEER FOR BREWERIES; AND

2 (B) 720 BOTTLES OR 60 CASES OF WINE FOR WINERIES.

3 (3) FOR ANY SHIPMENT INTO THE STATE THAT EXCEEDS THE LIMITS PROVIDED FOR IN SUBSECTION (2), THE  
4 OUT-OF-STATE BREWERY OR WINERY SHALL DISTRIBUTE THE BREWERY'S OR WINERY'S PRODUCT THROUGH A LICENSED  
5 WHOLESALE DISTRIBUTOR.

6 (4) AN OUT-OF-STATE BREWERY OR WINERY THAT VIOLATES THE PROVISIONS OF THIS SECTION IS SUBJECT TO  
7 THE PENALTIES PROVIDED FOR IN 16-6-302.

8  
9 NEW SECTION. SECTION 11. PENALTY FOR NONCOMPLIANCE. (1) EXCEPT AS PROVIDED IN [SECTION 10],  
10 A PERSON WHO VIOLATES THE PROVISIONS OF [SECTIONS 7 THROUGH 11] COMMITS A CIVIL OFFENSE.

11 (2) A PERSON CONVICTED UNDER SUBSECTION (1):

12 (A) FOR A FIRST OFFENSE, MUST BE MAILED A CERTIFIED LETTER BY THE DEPARTMENT ORDERING THAT PERSON  
13 TO CEASE AND DESIST COMMITTING THE VIOLATION;

14 (B) FOR A SECOND OFFENSE, SHALL BE FINED A CIVIL PENALTY NOT TO EXCEED \$500; AND

15 (C) FOR A THIRD OR SUBSEQUENT OFFENSE, SHALL BE FINED A CIVIL PENALTY NOT TO EXCEED \$2,500.

16  
17 NEW SECTION. SECTION 12. CODIFICATION INSTRUCTION. [SECTIONS 7 THROUGH 11] ARE INTENDED TO  
18 BE CODIFIED AS AN INTEGRAL PART OF TITLE 16, CHAPTER 4, AND THE PROVISIONS OF TITLE 16, CHAPTER 4, APPLY TO  
19 [SECTIONS 7 THROUGH 11].

20  
21 NEW SECTION. SECTION 13. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT]  
22 IS EFFECTIVE ON PASSAGE AND APPROVAL.

23 (2) [SECTIONS 7 THROUGH 11] ARE EFFECTIVE OCTOBER 1, 2001.

24 - END -